Filed 3/21/19 El Rovia Mobile Home Park, LLC v. City of El Monte CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

EL ROVIA MOBILE HOME PARK, LLC, Plaintiff and Appellant, v. CITY OF EL MONTE, Defendant and Respondent.	B288134 (Los Angeles County Super. Ct. No. KC069501)

APPEAL from a judgment of the Superior Court of Los Angeles, Robert A. Dukes, Judge. Affirmed in part, reversed in part.

Dowdall Law Offices, Terry R. Dowdall and Maureen A. Hatchell Levine for Plaintiff and Appellant.

Olivarez Madruga Lemieux O'Neill and Rick R. Olivarez; Demetriou, Del Guercio, Springer & Francis, Jeffrey Z.B. Springer and Leslie M. Del Guercio for Defendant and Respondent.

Plaintiff El Rovia Mobile Home Park, LLC appeals from a judgment of dismissal after the trial court sustained a demurrer filed by defendant and respondent City of El Monte (the City). Plaintiff brought a facial constitutional challenge to the City's Ordinance No. 2860[1], which imposed rent control on mobilehome parks, including the park owned by plaintiff. Plaintiff alleged that the City failed to make findings to support regulation of rents at smaller parks like plaintiff's, and that statements by City officials, staff, and consultants indicated that regulation was unnecessary. Plaintiff argues that these allegations, if true, undercut the constitutional justification for the ordinance, and are sufficient to survive demurrer.

Plaintiff's argument has merit. As our Supreme Court held in a case involving rent control, "Although the existence of 'constitutional facts' upon which the validity of an enactment depends [citation] is presumed in the absence of any showing to the contrary [citations], their nonexistence can properly be established by proof." (*Birkenfeld v. City of Berkeley* (1976) 17 Cal.3d 129, 160 (*Birkenfeld*).) The operative pleading, construed liberally, alleged that the City acknowledged there was no justification for regulating smaller parks. Thus, plaintiff alleged an absence of " 'constitutional facts' " supporting the City's ordinance. The trial court erred in sustaining the demurrer as to those allegations.

Plaintiff challenged the ordinance on other bases as well, including equal protection, impairment of a vested right, and impairment of contract. Plaintiff also brought specific challenges to provisions of the ordinance restricting rent increases upon the

---

[1] Ordinance references are to ordinances of the City of El Monte.

sale or transfer of a mobilehome, requiring mobilehome park owners to pay fees when seeking permission from the City to adjust rents, and requiring park owners to provide certain notices to prospective tenants. We hold that the trial court properly sustained the City's demurrer to these additional causes of action. Accordingly, we affirm in part and reverse in part.

BACKGROUND

A. The City's Rent Control Ordinances

1. Rent control before Ordinance Nos. 2829 and 2860

Our colleagues in Division Seven summarized the history of rent control in the City in *Brookside Investments, Ltd. v. City of El Monte* (2016) 5 Cal.App.5th 540 (*Brookside*), which is quoted extensively in plaintiff's First Amended Complaint (FAC), the operative pleading in this case. In 1988, the City enacted Ordinance No. 2216, which created a rent review commission to arbitrate rent disputes involving mobilehome parks with 60 or more spaces. (*Brookside*, at p. 544.) City voters approved an initiative in 1990 called the Mobilehome Tenant Rent Assistance Program (MTRAP) that, among other things, repealed Ordinance No. 2216 and prohibited the City from enacting further ordinances regulating rents at mobilehome parks. (*Brookside*, at pp. 544–545.)

In November 2012, City voters approved an ordinance repealing MTRAP. (*Brookside*, *supra*, 5 Cal.App.5th at p. 545.) In December 2012, the City adopted "interim urgency ordinance" No. 2811, temporarily freezing mobilehome space rents of $1,000 or more and limiting rent increases to no more than seven percent for rents between $600 and $1,000. (*Ibid.*; Ord. No. 2829,

preamble.) The City extended the urgency ordinance twice through September 30, 2013. (*Brookside*, at p. 545.)

2. Ordinance No. 2829

In September 2013, the City enacted Ordinance No. 2829, the " 'Mobilehome Space Rent Stabilization Ordinance.' " (Ord. No. 2829, § 1.) The ordinance began with a "Statement of purpose and findings," largely based on a study conducted by Waronzof Associates, Inc. and Stanley R. Hoffman Associates, Inc. at the City's request. (*Id.*, Preamble & § 8.70.020, boldface omitted.) Among the findings were a high percentage of low-income households living in mobilehomes in the City, low vacancy in mobilehome parks, and rent for some mobilehome spaces exceeding the average rent for an area apartment. (*Id.*, § 8.70.020.) The City found that "the scarcity of spaces and the prohibitive cost of mobilehome relocation makes mobilehome owners susceptible to excessive or unfair rent increases." (*Id.*, § 8.70.020(C).) The stated purpose of Ordinance No. 2829 was to protect mobilehome owners and residents from "unreasonable space rental increases while recognizing the need of mobilehome park owners to receive a just and reasonable return on their investments." (*Id.*, § 8.70.020(F).)

Ordinance No. 2829 limited the amount of rent that could be charged by owners of mobilehome parks with 101 or more spaces. (Ordinance No. 2829, § 8.70.050(D).) As to those parks, rent was capped at $760 per month; existing monthly rents below that amount could be raised annually by $50 up to the $760 ceiling. (*Ibid.*) Additional rent increases were subject to approval by a rental review board established by the ordinance. (*Id.*, §§ 8.70.040(A), 8.70.050(D).) Ordinance No. 2829 placed

no restrictions on rents in mobilehome parks with fewer than 101 spaces. (Ord. No. 2829, § 8.70.050(C).)

Ordinance No. 2829 had a sunset provision rendering it ineffective within one year of its adoption absent further action by the City Council. (Ord. No. 2829, § 8.70.160(A).) The ordinance directed City staff to "continue to study and assess the conditions engendering the adoption" of the ordinance "and submit a report within nine (9) months to the City Council regarding policy alternatives for the operation of mobilehome parks and the preservation and expansion of affordable housing appurtenances in mobilehome parks." (*Id.*, § 8.70.160(B).)

3. Ordinance No. 2860

In accordance with Ordinance No 2829, the City retained another consultant, Kenneth K. Baar, "to conduct a demographic and economic study of the mobilehome park housing in the City." (Ord. No. 2860, Preamble.) Based on Baar's findings, the City in August 2015 enacted Ordinance No. 2860, amending Ordinance No. 2829 "in its entirety." (Ord. No. 2860, preamble and § 2.) Ordinance No. 2860 is the ordinance plaintiff challenges in this case.

The ordinance in its preamble notes that the California legislature had found that California is " 'experiencing a severe housing shortage that compounds itself further each year.' " (Ord. No. 2860, preamble.) It further notes that "mobilehomes constitute a unique sector of the housing market because mobilehome owners own dwelling units manufactured in factories but not the land on which they are situated, unlike traditional home ownership in which the homeowner owns both the house and the land upon which it sits." (*Ibid.*)

Like Ordinance No. 2829, Ordinance No. 2860 lists amongst its findings a large percentage of low income families living in mobilehomes. (Ord. No. 2860, § 8.70.010(D).) The City further found, based on the Baar study, that vacancy rates "in other cities in the area" were "very low," and that "the largest mobilehome park in the City, which contains over one quarter of the mobilehome spaces in the City" had a higher average rent compared to parks in other cities. (*Id.*, § 8.70.010(E)–(F).)

Ordinance No. 2860's stated purposes are to (1) "Prevent excessive and unreasonable rent increases in mobilehome park space rents"; (2) "Preserve the availability of available mobilehome park spaces in the City"; (3) "Enable mobilehome owners to preserve the equity in their mobilehomes"; (4) "Permit mobilehome park owners to receive a fair return"; and (5) "Help preserve the affordability of space rents within the City." (Ord. No. 2860, § 8.70.010(A).)

Unlike Ordinance No. 2829, Ordinance No. 2860 applies to all mobilehome parks regardless of size, with certain exceptions not applicable here. (Ord. No. 2860, §§ 8.70.030, 8.70.040.) The ordinance prohibits space rent amounts above whatever was in effect as of July 1, 2015 (i.e., approximately two months before the ordinance took effect)[2] unless authorized through one of the methods of rent increase approved under the ordinance. (*Id.*, § 8.70.050.) A mobilehome park owner may not increase the space rent upon sale or transfer of the ownership of the mobilehome in that space, nor upon "replacement of the mobilehome by the homeowner." (*Id.*, § 8.70.075(A).)

---

[2] Per its terms, Ordinance No. 2860 went into effect 30 days after its adoption. (Ord. No. 2860, § 3.) This would have been on or around September 4, 2015.

The ordinance permits an annual rent increase that matches the annual percentage increase in the Consumer Price Index. (Ord. No. 2860, § 8.70.060(A).) The ordinance presumes this increase provides a "fair and reasonable return" to the mobilehome park owners. (*Id.*, § 8.70.080(A).) To the extent it does not, the ordinance provides a procedure for a mobilehome park owner to petition for an additional rent adjustment. (*Ibid.*; see § 8.70.090.) The ordinance permits only one such petition per mobilehome park per 12-month period, absent "extraordinary circumstances that could not reasonably have been foreseen at the time the prior petition was filed." (*Id.*, § 8.70.090(B).)

The ordinance provides that the City Manager decide rent adjustment petitions. (Ord. No. 2860, § 8.70.090(D)(1).) The City Manager has authority to require a fee from the petitioner for "the employment of experts" if the City Manager determines such experts "will be necessary or appropriate for a proper analysis of the [petitioner]'s presentation." (*Id.*, § 8.70.090(C)(2).) The City Manager's decision may be appealed to a hearing officer. (*Id.*, § 8.70.090(D)(2).) "The appealing party shall be required to pay for costs of the appeal process in accordance with any fees set forth by resolution of the City Council." (*Ibid.*)

In addition to the above methods of rent adjustment, the ordinance permits mobilehome park owners to pass certain costs for capital improvements on to tenants through rent increases. (Ord. No. 2860, § 8.70.100.)

The ordinance requires mobilehome park owners to provide specified notices to prospective tenants. (Ord. No. 2860, § 8.70.150.) We discuss the notice requirements in Part F of our Discussion section, *post*.

B. Procedural History

1. First Amended Complaint

Plaintiff, the owner of a 76-space mobilehome park in the City, filed a facial constitutional challenge seeking to invalidate Ordinance No. 2860. Plaintiff alleged that it purchased the park in April 2013. Before doing so, plaintiff consulted with City officials and staff to determine the likelihood that the park would be subject to rent control. Plaintiff alleged that it "was told, in substance, that small parks were not the problem" as to excessive rents. The FAC defined "small parks" as those with fewer than 100 spaces. Plaintiff alleged that only two of the City's approximately 30 mobilehome parks had more than 100 spaces, and only the largest, with 421 spaces, had received complaints of excessive rents. Plaintiff also alleged the City told it "that rent regulations would not apply" if plaintiff abided by certain rent increase guidelines that the City "subsequently embodied" in Ordinance No. 2829 (although the ordinance itself did not apply to plaintiff's park).

Plaintiff further alleged that "reports of City consultants who studied and reported on the rental market[ ] found and concluded[ ] that the smaller parks (such as Plaintiff's) did not give reason or cause for rent controls." Plaintiff alleged that the study by Waronzof and Hoffman, which led to the enactment of Ordinance No. 2829, "adduced no abuses relative to small park owners like Plaintiff," and indeed "found only reasonableness and compassion." Plaintiff similarly alleged that consultant Baar "found no reason to pass rent controls for smaller parks," quoting a statement from Baar's report that " 'In hearings and in [Ordinance No. 2829] the City Council has indicated that rent increases in smaller parks are not an issue at this time.' "

In light of the above, plaintiff alleged there were "no [ ]constitutional facts showing [']ill effects of sufficient seriousness to make rent control a rational curative measure' " for smaller parks, quoting *Birkenfeld*, *supra*, 17 Cal.3d at p. 160. Plaintiff alleged an "absence of conceivable justification" for rent regulation of smaller parks.

Plaintiff also specifically challenged the provision of Ordinance No. 2860 prohibiting rent increases upon sale or transfer of a mobilehome, which the FAC referred to as "vacancy control." Plaintiff alleged that a tenant selling his or her mobilehome could charge the buyer a premium reflecting the transfer of an undermarket rental rate, thus effectively "sell[ing] an interest in Plaintiff's land" and causing a "wealth transfer." Plaintiff alleged that by paying the premium, the buying tenant would lose any benefit of rent control, undercutting the justification for the regulation.

Plaintiff asserted seven causes of action. The first sought declaratory and injunctive relief invalidating the vacancy control provision of Ordinance No. 2860. The second claimed the ordinance violated due process and equal protection under the California Constitution. The third, characterized as a violation of a "constitutional right to a fair return on investment" (capitalization and italics omitted), challenged the ordinance's requirement that park owners pay fees for rent adjustment hearings, which in plaintiff's case allegedly totaled $25,000. Plaintiff also alleged that the ordinance improperly denied the right to obtain rent adjustments upon the sale of a mobilehome. The fourth cause of action alleged that the ordinance impaired plaintiff's "vested right in the continuation of an unregulated rental rate." The fifth alleged the ordinance violated equal

protection by treating plaintiff differently than "other residential property owners." The sixth alleged the ordinance violated the California Constitution's "contracts clause and bill of attainder provisions" (italics omitted) by impairing plaintiff 's alleged vested rights under the City's previous rent control law, Ordinance No. 2829. The seventh cause of action alleged that state law preempted certain notice provisions of the ordinance.[3]

2. Demurrer and ruling

The trial court sustained the City's demurrer to the FAC. The trial court cited authority holding that rent control laws were "constitutionally valid" so long as they permitted landlords a fair return on their investment, and found that Ordinance No. 2860 provided for a fair return. On this basis, the trial court sustained the demurrer to the second through sixth causes of action.

Addressing the causes of action individually, the trial court found the second cause of action failed for the additional reason that the fact that a regulation results in a "wealth transfer" does not convert it to an unconstitutional taking. The trial court interpreted the third cause of action as objecting to the particular $25,000 fee charged to plaintiff, which the court found improper in a facial constitutional challenge. The trial court found plaintiff had no vested right in an unregulated rental rate and sustained the demurrer to the fourth cause of action on that basis. The trial court found no equal protection violation as alleged in the fifth cause of action because, in light of the ordinance's permitting park owners a fair return, it was "at least

---

[3] Plaintiff stated that it reserved its rights to file federal claims in federal court and had "no intention of resolving its federal constitutional claims in state court."

'debatable' . . . that this system bears a rational relationship to a public purpose." The trial court sustained the demurrer to the sixth cause of action because of authority holding that because the rental industry is routinely regulated, any impairment of contracts thereby is not unconstitutional. The trial court rejected the preemption theory of the seventh cause of action because "[r]ent control is an area over which local governments have traditionally exercised control." Finally, the trial court sustained the demurrer to the first cause of action, finding that it was derivative of plaintiff's "other failed causes of action."

Plaintiff declined to amend the FAC. The trial court dismissed the action with prejudice. Plaintiff timely appealed.

STANDARD OF REVIEW

"In reviewing an order sustaining a demurrer, we examine the operative complaint de novo to determine whether it alleges facts sufficient to state a cause of action under any legal theory." (*T.H. v. Novartis Pharmaceuticals Corp.* (2017) 4 Cal.5th 145, 162 (*T.H.*).) We "adopt[ ] a liberal construction of the pleading and draw[ ] all reasonable inferences in favor of the asserted claims." (*Candelore v. Tinder, Inc.* (2018) 19 Cal.App.5th 1138, 1143.) "[W]e accept as true all properly pleaded facts." (*T.H.*, *supra*, at p. 156.) We are not bound by the trial court's reasoning and may affirm the judgment if correct on any theory. (*Young v. California Fish & Game Com.* (2018) 24 Cal.App.5th 1178, 1192–1193.) Thus, "[i]f a complaint is insufficient on any ground specified in a demurrer, the order sustaining the demurrer must be upheld even though the particular ground upon which the court sustained it may be untenable." (*Stearn v. County of San Bernardino* (2009) 170 Cal.App.4th 434, 440.)

Plaintiff declined to amend its complaint after the trial court sustained the demurrer, and similarly makes no argument on appeal regarding amendment. Thus, we " ' "presume[ ] that the plaintiff has stated as strong a case as [it] can" ' " (*Foxen v. Carpenter* (2016) 6 Cal.App.5th 284, 296), and do not consider whether further amendment might preserve a cause of action otherwise properly dismissed.

DISCUSSION

A. Plaintiff has sufficiently alleged that the City exceeded its police power in enacting Ordinance No. 2860

Rent control provisions have been held to be within a city's constitutional police power "if they are reasonably calculated to eliminate excessive rents and at the same time provide landlords with a just and reasonable return on their property." (*Birkenfeld*, *supra*, 17 Cal.3d at p. 165.) The trial court sustained the demurrer to the second through sixth causes of action after finding that Ordinance No. 2860 adequately provided mobilehome park owners with a fair return on their investment under a " 'maintenance of net operating income' " standard. In support, the trial court cited *Oceanside Mobilehome Park Owners' Assn. v. City of Oceanside* (1984) 157 Cal.App.3d 887 (*Oceanside*), which found a similar standard constitutionally valid.[4] (*Id.* at pp. 902–903.)

[4] We do not decide whether the trial court correctly concluded that the fair return standard approved in *Oceanside* was analogous to the standard in Ordinance No. 2860.

Plaintiff argues that the FAC did not seek to challenge the fair return standard; rather, plaintiff challenged the City's authority to regulate the smaller mobilehome parks in the first place, given alleged statements by the City's officials and retained consultants indicating that the small parks were not contributing to the problems Ordinance No. 2860 was enacted to address. Plaintiff argues that under *Birkenfeld* he can raise this challenge regardless of the availability of a fair return. Plaintiff 's argument has merit. We begin with a summary of the relevant portions of *Birkenfeld*.

1. *Birkenfeld*

Birkenfeld involved a constitutional challenge to an amendment to the City of Berkeley's charter providing for residential rent control. (17 Cal.3d at p. 135.) The trial court declared the amendment void "principally on the ground that the evidence at a lengthy trial showed that the city was not faced with a serious public emergency of the sort the court deemed constitutionally prerequisite to imposition of rent controls under the police power." (*Ibid.*)

The Supreme Court held that a city could enact rent control under its police power even in the absence of an emergency. (*Birkenfeld*, *supra*, 17 Cal.3d at pp. 158–160.) The court stated that, like other price regulations or restrictions on contractual or property rights, rent control was constitutionally permissible under the police power so long as it was "reasonably related to the accomplishment of a legitimate governmental purpose." (*Id.* at p. 158.) The court summarized the challenged amendment's stated purposes: "the alleviation of the ill effects of the exploitation of a housing shortage by the charging of exorbitant rents to the detriment of the public health and welfare

of the city and particularly its underprivileged groups." (*Id.* at p. 160.) The court held that the amendment therefore "state[d] on its face the existence of conditions in the city under which residential rent controls are reasonably related to promotion of the public health and welfare and are therefore within the police power." (*Ibid.*)

"However," the court continued, "the constitutionality of residential rent controls under the police power depends upon the actual existence of a housing shortage and its concomitant ill effects of sufficient seriousness to make rent control a rational curative measure. Although the existence of 'constitutional facts' upon which the validity of an enactment depends [citation] is presumed in the absence of any showing to the contrary [citations], their nonexistence can properly be established by proof." (*Birkenfeld*, *supra*, 17 Cal.3d at p. 160.) The court proceeded to review the trial court's findings, stating it would "sustain the propriety of rent controls under the police power unless the findings establish a complete absence of even a debatable rational basis for the legislative determination . . . that rent control is a reasonable means of counteracting harms and dangers to the public health and welfare emanating from a housing shortage." (*Id.* at p. 161.)

The court concluded that "the findings affirm the existence of housing problems that correspond in kind even if not in degree of gravity with the conditions described" in the challenged amendment. (*Birkenfeld*, *supra*, 17 Cal.3d at p. 161.) The findings identified by the court included a low vacancy rate for residential housing, approximately 25,000 tenants with low incomes paying " 'in excess of 35% of [their] income' " in rent, a loss of " 'federally-funded assistance programs' " for some

residents, and difficulties for " 'aged and disabled persons' " in "finding reasonably priced low-cost housing." (*Id.* at pp. 161–162.)

The court also noted findings by the trial court "of ameliorative conditions" weighing against the propriety of rent control, such as an increase in the vacancy rate, availability of dormitory space and financial aid for low-income students, a high "percentage of rental housing available for less than $200 per month in certain districts of Berkeley," and an increase in "[n]onwhite home ownership." (*Birkenfeld*, *supra*, 17 Cal.3d at pp. 162–163.) The court stated that these "ameliorative conditions . . . would provide appropriate material for arguing to a legislative body that it should not enact rent controls," but they "d[id] not dispel the constitutionally sufficient rational basis for rent control provided by the charter amendment's statement of purpose [citation] and the findings previously summarized." (*Id.* at p. 162.) "While all these [ameliorative] facts are encouraging they do not push beyond the pale of rational debate the existence of a housing shortage and accompanying excessive rents serious enough to warrant the imposition of rent controls." (*Id.* at p. 163.)

Having concluded there were sufficient constitutional facts to uphold Berkeley's power to enact rent control, the Supreme Court went on to "consider the constitutionality of the means provided by the amendment for fixing and adjusting permissible rents." (*Birkenfeld*, *supra*, 17 Cal.3d at p. 165.) It was in this context that the court stated the principle that rent control provisions "are within the police power if they are reasonably calculated to eliminate excessive rents and at the same time provide landlords with a just and reasonable return on

their property. However, if it is apparent from the face of the provisions that their effect will necessarily be to lower rents more than could reasonably be considered to be required for the measure's stated purpose, they are unconstitutionally confiscatory." (*Ibid.*) The court concluded Berkeley's amendment was unconstitutional because its provisions "drastically and unnecessarily restrict[ed] the rent control board's power to adjust rents, thereby making inevitable the arbitrary imposition of unreasonably low rent ceilings." (*Id.* at p. 169.)

2. Analysis

While the trial court here was correct that the constitutionality of a rent control ordinance depends on it providing a fair return to landlords, this inquiry presumes that the City was within its authority to enact the ordinance in the first place, that is, that there were "ill effects of sufficient seriousness to make rent control a rational curative measure." (*Birkenfeld*, *supra*, 17 Cal.3d at p. 160.) As *Birkenfeld* states, courts will presume the existence of such " 'constitutional facts,' " but "their nonexistence can properly be established by proof." (*Ibid.*) In other words, a plaintiff may invalidate a rent control provision by proving the nonexistence of the necessary constitutional facts, even if the ordinance provides for a fair return. We thus agree with plaintiff that, to the extent its causes of action were based on an alleged absence of constitutional facts, the trial court erred in sustaining the demurrer merely on the basis that the ordinance provided a fair return to park owners.

The FAC in its "Allegations Common to All Causes of Action" (boldface omitted) cited *Birkenfeld* and alleged a lack of constitutional facts, but it is not immediately clear which causes of action plaintiff intended those allegations to support. The

second cause of action, however, expressly claimed a due process violation and alleged that "Ordinance [No.] 2860 is arbitrary and unreasonable and has no substantial relation to the public health, safety, morals, or general welfare." *Birkenfeld* stated that the police power "extends to objectives in furtherance of the public peace, safety, morals, health and welfare." (*Birkenfeld*, *supra*, 17 Cal.3d at p. 160.) We therefore construe the second cause of action to incorporate a challenge to Ordinance No. 2860 based on an absence of constitutional facts.

With this in mind, we further conclude that under *Birkenfeld*, plaintiff has adequately alleged an absence of constitutional facts in support of Ordinance No. 2860. Plaintiff alleged that, prior to purchasing the mobilehome park, plaintiff "met and consulted elected City officials and staff, including Mayor Macias," and "was told, in substance, that small parks were not the problem." Plaintiff further alleged that the studies conducted by the City's retained consultants and cited in Ordinance Nos. 2829 and 2860 found no abuse by the small park owners and no reason to regulate them. Drawing all reasonable inferences in favor of the asserted claims, plaintiff alleged that neither the City nor its consultants ever made findings supporting imposition of rent control on small mobilehome parks; indeed, plaintiff alleged they found the opposite. Plaintiff thus has alleged sufficiently that the City exceeded its police power by enacting Ordinance No. 2860.

In so holding we do not suggest that the specific statements by City officials or consultants, as paraphrased in the FAC, necessarily or as a matter of law establish a lack of constitutional facts, only that the FAC, liberally construed, broadly alleged a

lack of such facts. On demurrer we must accept that allegation as true.

The City argues that *Birkenfeld*'s " 'constitutional facts' " approach is no longer valid in light of the Supreme Court's decision in *Santa Monica Beach, Ltd. v. Superior Court* (1999) 19 Cal.4th 952 (*Santa Monica Beach*). In that case, the court affirmed the trial court's order sustaining a demurrer to a claim that the City of Santa Monica's rent control law was an unconstitutional regulatory taking. (*Id.* at pp. 956–957.) The plaintiff argued "that the demographic groups that the Rent Control Law was allegedly supposed to favor have not in fact benefited from it." (*Id.* at p. 963.) The court rejected this theory, stating that the plaintiff "seeks to engage courts in the task of evaluating whether a piece of complex legislation has sufficiently measured up to its objectives to preserve its constitutional validity. Nothing in the United States Supreme Court's recent jurisprudence indicates that it envisions such an activist role for the courts." (*Id.* at p. 973.) "[W]ith rent control, as with most other such social and economic legislation, we leave to legislative bodies rather than the courts to evaluate whether the legislation has fallen so far short of its goals as to warrant repeal or amendment. Courts, on the other hand, retain the constitutional role of invalidating certain features and applications of rent control law that have or will produce confiscatory results." (*Id.* at p. 974.)

The City argues that under *Santa Monica Beach*, "the standard . . . is whether the legislation produces 'confiscatory results,' not whether there is a lack of 'constitutional facts.' " *Santa Monica Beach*, however, says nothing about constitutional facts or *Birkenfeld*'s holding in that regard. Nor would it given

that the plaintiff in *Santa Monica Beach* did not challenge the validity of the rent control law's enactment, as was the case in *Birkenfeld*. *Santa Monica Beach* stands for the proposition that courts may not review the efficacy of an already-enacted rent control law, but did not address a court's review of the necessity of the law in the first place, the issue confronted in *Birkenfeld* and in the instant case.

The City argues that *Santa Monica Beach* "firmly left the issue of the factual support necessary to support legislative findings in the hands of legislative bodies." This is true in the context of evaluating the efficacy of an already-enacted law. Again, however, *Santa Monica Beach* did not address or question *Birkenfeld*'s holding that a party could prove at trial the absence of necessary constitutional facts justifying the enactment of a law in the first place.

The City argues *Santa Monica Beach* "clarified that a housing shortage is not a constitutional prerequisite for rent control." *Santa Monica Beach* cited and agreed with *Birkenfeld* that "an *emergency* housing shortage, such as may exist during wartime, is not a constitutional requisite for rent control." (*Santa Monica Beach*, *supra*, 19 Cal.4th at p. 972, italics added.) *Santa Monica Beach* did not abrogate *Birkenfeld*'s holding that there must be actual facts indicating a necessity for rent control before a city may enact such a law. (*Birkenfeld*, *supra*, 17 Cal.3d at p. 160.)

In short, the constitutional challenge to the efficacy of rent control in *Santa Monica Beach* is distinguishable from the police powers challenge in *Birkenfeld*. Here, plaintiff's challenge is analogous to the challenge in *Birkenfeld*, and that precedent

compels the conclusion that plaintiff 's second cause of action survives demurrer.

To provide guidance to the trial court on remand, we note that even under *Birkenfeld*, the Supreme Court urged great deference to legislative determinations. To prevail, plaintiff must "establish a *complete absence of even a debatable rational basis* for the legislative determination . . . that rent control is a reasonable means of counteracting" the ills the regulation was designed to address. (*Birkenfeld*, *supra*, 17 Cal.3d at p. 161.) Evidence against the necessity of rent control must "push beyond the pale of rational debate the existence" of conditions justifying regulation. (*Id.* at p. 163.) Needless to say, this is a challenging burden for plaintiff to meet.

We further note that the necessary constitutional facts in this case may differ from those in *Birkenfeld* given the differences between the purposes of the rent control law at issue in that case and Ordinance No. 2860. In *Birkenfeld*, the Supreme Court determined that the purpose of Berkeley's rent control law was "the alleviation of the ill effects of the exploitation of a housing shortage by the charging of exorbitant rents to the detriment of the public health and welfare of the city and particularly its underprivileged groups," and thus the court's analysis focused on whether the evidence showed "the actual existence of a housing shortage and its concomitant ill effects of sufficient seriousness to make rent control a rational curative measure." (*Birkenfeld*, *supra*, 17 Cal.3d at p. 160).

The purposes of Ordinance No. 2860 are somewhat different. For example, although the ordinance seeks to "[p]revent excessive and unreasonable increases in mobilehome park space rents," it also seeks to "[p]reserve the availability of

available mobilehome park spaces in the City" and "[e]nable mobilehome owners to preserve their equity in their mobilehomes," the latter a concern unique to tenants of mobilehome parks who own the physical structure of their home but rent the space on which it sits. (Ord. No. 2860, § 8.70.010(A).) The purposes of Ordinance No. 2860 should guide the trial court's determination of the constitutional facts necessary to uphold the ordinance.

Finally, we emphasize that *Birkenfeld* authorizes examination only of the conditions giving rise to a need for regulation, not the wisdom of a particular regulatory approach. (See *Birkenfeld*, *supra*, 17 Cal.3d at p. 159 [arguments about the negative consequences of rent control laws "go to the wisdom of rent controls and not to their constitutionality"].) Thus, plaintiff's challenge is not an opportunity to debate the effectiveness of Ordinance No. 2860 or rent control in general, questions which the Supreme Court has left to legislators. (See *Santa Monica Beach*, *supra*, 19 Cal.4th at pp. 973–974 ["we are not considering the question whether rent control is good policy but rather affirming the constitutional propriety of having the political process, through state and local legislative bodies, determine that policy"].)

We turn now to plaintiff's other causes of action.

B. The trial court properly sustained the demurrer to the first cause of action

Plaintiff's first cause of action sought declaratory and injunctive relief regarding "[v]acancy [c]ontrol," the provision of Ordinance No. 2860 that prohibits park owners from raising rents upon a "change of ownership or occupancy of a mobilehome or a space otherwise becoming vacant." Plaintiff argues that

although this provision ostensibly extends the benefits of a prior mobilehome owner's controlled space rent to a subsequent owner, in fact that subsequent owner loses all benefit because the prior owner may charge a premium for the mobilehome that equals or exceeds any future space rent savings. Plaintiff characterizes this as a "wealth transfer" because it allows space tenants to "appropriate and sell the cash value of living in [the owner's] parks under rent control." Plaintiff alleges that the vacancy control provision constitutes an unconstitutional regulatory taking, or, alternatively, a violation of due process or equal protection.

The Fourth District Court of Appeal upheld a vacancy control provision in *Montclair Parkowners Assn. v. City of Montclair* (1999) 76 Cal.App.4th 784 (*Montclair*). In that case, the city considered a "proposed vacancy control provision [that] would prohibit Park Owners from adjusting the space rent to market level when a mobilehome is sold in place." (*Id.* at p. 788.) Prior to enacting the provision, the city considered, but ultimately rejected, an argument similar to that raised by plaintiff here, that is, "that any benefit created by the proposed vacancy control provision would be captured only by the existing mobilehome owners because lower rent-controlled space-rental rates would allow them to sell their mobilehomes at higher prices." (*Ibid.*) The city concluded that "in light of the data collected from neighboring cities with similar rent control ordinances, any potential increase in sale prices of mobilehomes would be more than offset by low rental rates. Also, prospective mobilehome owners would be able to benefit from the higher equity retained in the mobilehomes once they bought them." (*Ibid.*)

The ordinance as enacted limited space rental increases "upon sale or transfer of ownership of a mobilehome to the greater of: (a) 3 percent; or (b) 100 percent of the most current annual CPI (consumer price index) percentage increase, up to a maximum of 8 percent." (*Montclair*, *supra*, 76 Cal.App.4th at p. 788.) A consortium of mobilehome park owners challenged the constitutionality of the law. (*Id.* at p. 789.) The trial court sustained the city's demurrer to the complaint. (*Id.* at p. 790.)

The Court of Appeal affirmed. (*Montclair*, *supra*, 76 Cal.App.4th at p. 796.) Citing *Santa Monica Beach*, the court concluded "that the proper inquiry in determining whether a rent control scheme applicable to mobilehome parks is a regulatory taking under the California Constitution is whether such a scheme is an arbitrary regulation of landowner's property rights." (*Montclair*, at p. 794; see *Santa Monica Beach*, *supra*, 19 Cal.4th at p. 967 ["the party challenging rent control must show 'that it constitutes an arbitrary regulation of property rights' "].)

Under that standard, the court held that the ordinance did not constitute a regulatory taking. The plaintiffs conceded "that protection of the current mobilehome owner's equity in their homes and protection of prospective mobilehome owners from excessive rents are legitimate government interests." (*Montclair*, *supra*, 76 Cal.App.4th at p. 795.) The city "could have reasonably concluded that limiting Park Owners' ability to raise the rent upon the sale or transfer of mobilehomes would accomplish that goal by making mobilehomes more attractive sale items and making mobilehome ownership more feasible for prospective buyers. Thus, Ordinance No. 98–777 on its face is not an arbitrary regulation of Park Owners' property rights." (*Ibid.*)

We agree with the reasoning of *Montclair* upholding vacancy control. Plaintiff's arguments as to the potential negative consequences of vacancy control go to the wisdom of such an approach, not its reasonableness. (See *Birkenfeld*, *supra*, 17 Cal.3d at p. 159.)

Our conclusion also disposes of plaintiff's due process argument. (See *Galland v. City of Clovis* (2001) 24 Cal.4th 1003, 1024 ["It would be incongruous for us to conclude, on the one hand, . . . that a landlord . . . has not suffered a constitutional injury under the takings clause, but, on the other hand, that he or she has suffered such an injury under the due process clause."].)

Plaintiff's equal protection claim fares no better. In the rent control context, "[w]here there is no suspect classification, and purely economic interests are involved, a municipality may impose any distinction which bears some 'rational relationship' to a legitimate public purpose. [Citation.] Courts consistently defer to legislative determinations as to the desirability of such distinctions. [Citation.] The ordinance will be upheld so long as the issue is ' "at least debatable." ' " (*Cotati Alliance for Better Housing v. City of Cotati* (1983) 148 Cal.App.3d 280, 291–292 (*Cotati Alliance*).)

Plaintiff does not contend that small park owners are a suspect classification. Under *Montclair*, the vacancy control provisions of Ordinance No. 2860 are at least debatably rationally related to the legitimate purpose of making mobilehomes a more valuable asset to their owners. Thus, accepting for the sake of argument that the ordinance treats small park owners differently than some other group, there nonetheless is no equal protection

violation. The trial court properly sustained the demurrer to the first cause of action.

C. The trial court properly sustained the demurrer to the third cause of action

Plaintiff's third cause of action alleged that the procedures under Ordinance No. 2860 for petitioning for rental increases violate due process and constitute an "illegal exaction" because they require a petitioning mobilehome park owner to pay certain costs for the administrative proceeding. Plaintiff alleged that it was charged $25,000 for the proceeding. Plaintiff further objected that the ordinance "sets forth no rights to hear or grant rent adjustments on the sale of mobilehomes due to the face of Ordinance [No.] 2860 which forbids it, nor any administrative procedure for attaining such relief."

As the trial court correctly noted in its ruling, the fact that plaintiff was assessed a $25,000 fee has no bearing on plaintiff's facial constitutional challenge, which "considers only the text of the measure itself, not its application to the particular circumstances of an individual." (*Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1084 (*Tobe*).) Ordinance No. 2860 provides that the City may require a petitioner to pay the costs of hiring experts, as well as any appeal fees the City Council mandates by resolution, but does not state any specific amounts. Thus, to the extent plaintiff objects to the amount of the fee, such objection is improper in a facial challenge.

Plaintiff argues the third cause of action does not challenge the particular fee assessed against plaintiff, but the discretion granted to the City to charge fees for rent adjustment proceedings, which plaintiff contends "can lead to . . . abuse" like the high fees allegedly charged to plaintiff.

We recognize that in some circumstances it is constitutionally impermissible to impose certain costs on those seeking to vindicate their rights in adjudicatory proceedings. For example, our Supreme Court held a statute facially invalid when it required teachers who did not prevail in administrative challenges to their suspensions or dismissals to pay half the cost of the administrative law judge. (*California Teachers Assn. v. State of California* (1999) 20 Cal.4th 327, 331; see *id.* at p. 338 ["The imposition of a cost or risk upon the exercise of the right to a hearing is impermissible if it has ' "no other purpose or effect than to chill the assertion of constitutional rights by penalizing those who choose to exercise them." ' "].)

Assuming for the sake of argument that this principle applies to expert and appeal costs in rent adjustment proceedings, we nonetheless hold that Ordinance No. 2860 is not facially invalid on this basis. " ' "A claim that a regulation is *facially* invalid is only tenable if the terms of the regulation will not permit those who administer it to avoid an unconstitutional *application* to the complaining parties." ' " (*Home Builders Assn. v. City of Napa* (2001) 90 Cal.App.4th 188, 199.) Here, the ordinance permits the City to assess a fee for experts, but the City may avoid any unconstitutional outcomes by declining to do so, or by assessing only a reasonable fee. (See *Zuckerman v. State Bd. of Chiropractic Examiners* (2002) 29 Cal.4th 32, 44–45 [regulation imposing prosecution and investigation costs on disciplined chiropractors facially constitutional when regulatory board had discretion to reduce or eliminate cost awards].)

As for the requirement of payment of costs of appeal, Ordinance No. 2860 in fact imposes no specific costs, instead deferring to the City Council to set costs by resolution.

(Ord. No. 2860, § 8.70.090(D)(2).) Plaintiff raised no allegations concerning such a resolution, nor does one appear in the record. In the absence of information regarding what costs, if any, the City requires appealing parties to pay, we cannot conclude those costs are unconstitutional in this facial challenge.

We also reject plaintiff's assertion that Ordinance No. 2860 is unconstitutional because it provides no mechanism to raise rents upon the sale or transfer of ownership of a mobilehome. As we explained in our discussion of plaintiff's first cause of action, *ante*, the ordinance's vacancy control provisions do not violate due process, equal protection, or the takings clause of the California Constitution. Moreover, plaintiff's allegations are factually inaccurate. The ordinance provides a method for petitioning for a rent adjustment, which could be invoked to raise rent upon sale of a mobilehome if appropriate. To the extent a park owner uses the change of ownership as an opportunity to perform capital improvements, the ordinance provides a method for passing some of those costs on to the new tenant. Thus, while the ordinance does not permit an automatic increase of rent upon sale or transfer of ownership of a mobilehome, it has mechanisms to ensure a park owner receives a fair return.

D. The trial court properly sustained the demurrer to the fourth and sixth causes of action

Plaintiff's fourth cause of action alleged that plaintiff "has a vested right in the continuation of an unregulated rental rate" that barred the City from subjecting plaintiff's park to the rent and vacancy control provisions of Ordinance No. 2860. On appeal, plaintiff argues that this "vested right" arose from the City's representations to plaintiff prior to plaintiff's purchase of the mobilehome park that small parks would not be regulated,

representations plaintiff asserts were "embodied in Ordinance [No.] 2829," the City's original rent control ordinance applicable only to the larger parks. Plaintiff claims at minimum it had a "vested right" to the $760 rent ceiling under Ordinance No. 2929.

The FAC characterizes the sixth cause of action as asserting violations of the California Constitution's contracts clause and prohibition on bills of attainder. However, the allegations are based entirely on a purported "vested right" in the $760 rent ceiling imposed by Ordinance No. 2829. On appeal, plaintiff's arguments in defense of this cause of action similarly pertain to "vested rights." Thus, it is appropriate to consider the fourth and sixth causes of action together as alleging infringement of plaintiff's "vested rights."

Plaintiff provides no authority for the proposition that an unregulated individual or entity has a constitutional right not to be regulated in the future, especially in an industry that is "routinely regulated." (See *Danekas v. San Francisco Residential Rent Stabilization & Arbitration Bd.* (2001) 95 Cal.App.4th 638, 651 [" 'Rent control, like the imposition of a new tax, is simply one of the usual hazards of the business enterprise.' "], quoting *Interstate Marina Development Co. v. County of Los Angeles* (1984) 155 Cal.App.3d 435, 447.)

Plaintiff also does not explain how it or other smaller park owners had a vested right to the $760 rent ceiling under Ordinance No. 2829, when the rent controls in that ordinance expressly did not apply to smaller parks. We reject plaintiff's contention that this rent ceiling "was allowed, vested, [and] also agreed to by the City Council member who codified the understanding into Ordinance [No.] 2829." Even if the rent ceiling applied, again, in a routinely regulated industry, plaintiff

had no expectation or right not to have that ceiling changed for future rental agreements.

Plaintiff argues that retroactive legislation is impermissible, citing *Californians for Disability Rights v. Mervyn's, LLC* (2006) 39 Cal.4th 223, 231 ["application of the new law to pending cases would improperly have changed the legal consequences of past conduct by imposing new or different liabilities based upon such conduct"].) Even accepting this proposition for argument's sake, however, plaintiff fails to explain how Ordinance No. 2860 subjects plaintiff or other park owners to liability for past conduct. Plaintiff does not allege, for example, that the ordinance requires park owners to refund rents already collected or alter existing rental arrangements, nor do the terms of the ordinance suggest any such consequences.

Plaintiff cites *Palacio de Anza v. Palm Springs Rent Review Com.* (1989) 209 Cal.App.3d 116 (*Palacio de Anza*) in support of its vested rights argument, but it is inapposite. In *Palacio de Anza*, landlords petitioned for a writ of administrative mandate after the city's rent review commission denied their application for a "hardship rent increase" as permitted under the local rent control ordinance. (*Id.* at p. 119.) The trial court denied the petition and the landlords appealed. (*Ibid.*) The landlords' tenants, as real parties in interest, argued the appeal was moot because one day before the trial court entered judgment, the city had repealed the provision of the law permitting "inclusion of purchase-money financing interest payments in costs allowable for the purpose of calculating 'net operating income,' " upon which the landlords' hardship application depended. (*Id.* at pp. 119–120.)

The Court of Appeal rejected the tenants' argument. (*Palacio de Anza*, *supra*, 209 Cal.App.3d at p. 120.) The court stated that the rent control laws "created land-use property rights which became vested in Palacio when the financing of the apartment purchase was undertaken in reliance on the existing rent-control laws." (*Ibid.*) The court continued: "Any attempt to retroactively apply the repeal of the [rent control law's] debt financing cost allowance to Palacio's vested rights would constitute an invalid impairment of an established economic/property interest without due process of law." (*Ibid.*)

Palacio de Anza confronted a circumstance in which a city repealed a basis for hardship relief from rent control after landlords, in conformance with existing rent control laws, had initiated a proceeding seeking hardship relief. No such circumstance exists here; the City did not change the rent control rules in the midst of a proceeding in which plaintiff was engaged.

Plaintiff's other cited cases similarly involve retroactive intrusion into existing proceedings or agreements and also are inapposite. (*City of West Hollywood v. Beverly Towers, Inc.* (1991) 52 Cal.3d 1184, 1189–1190 [newly incorporated city could not restrict developers' right to convert apartments to condominiums when developers already had received approval to do so from state Department of Real Estate]; *Wallace v. City of Fresno* (1954) 42 Cal.2d 180, 185 [amendment allowing termination of pension payments if pensioner was convicted of felony could not be applied to pension that vested prior to amendment]; *County of Los Angeles v. Rockhold* (1935) 3 Cal.2d 192, 202 [statute altering nature, redemption period, and available remedies for previously issued bonds constituted an impairment of contract]; *Medical Finance Assn. v. Wood* (1936) 20 Cal.App.2d Supp. 749, 750–751

[statute limiting property by which a debt could be satisfied did not apply to debts incurred prior to statute's enactment]).

On appeal, plaintiff asserts an estoppel argument, arguing that plaintiff relied to its detriment on the City's representations that the City would only regulate rents at the larger mobilehome parks. In its reply brief, however, plaintiff indicates that its estoppel theory and its vested rights theories "ha[ve] the same essence," because both depend on the notion that the City's representations gave plaintiff the right to remain unregulated. Our rejection of plaintiff's vested rights theory thus disposes of the estoppel theory as well. To the extent plaintiff's estoppel argument relies on representations made to plaintiff directly (such as the City's responses to plaintiff's inquiries regarding the possibility of future rent control), the argument goes beyond the text of the ordinance itself and is not cognizable in a facial constitutional challenge. (See *Tobe*, *supra*, 9 Cal.4th at p. 1084.)

In the absence of any allegations or argument supporting the existence of a "vested right," the trial court properly sustained the demurrer to the fourth and sixth causes of action.

E. The trial court properly sustained the demurrer to the fifth cause of action

Plaintiff claims that Ordinance No. 2860 violates plaintiff's right to equal protection under the laws because it impermissibly differentiates between small mobilehome park owners and "other residential property owners" not subject to rent and vacancy control. As we explained in discussing plaintiff's first cause of action, *ante*, the ordinance's vacancy control provisions are rationally related to a legitimate public purpose, and therefore survive an equal protection challenge. The rent control provisions in general also are rationally related to the legitimate

purposes of the ordinance, including "[p]reven[ting] excessive and unreasonable rent increases" and "preserv[ing] the affordability of space rents." (Ord. No. 2860, § 8.70.010(A).) While plaintiff disputes whether the ordinance actually will produce these benefits, we must uphold the ordinance "so long as the issue is ' "at least debatable," ' " which it is. (*Cotati Alliance*, *supra*, 148 Cal.App.3d at p. 292.)

On appeal, in defense of its equal protection claim, plaintiff cites *Birkenfeld* and argues a lack of constitutional facts. As we have explained, *Birkenfeld* addressed rent control as a potential violation of a city's police powers, not equal protection.

The demurrer was properly sustained as to plaintiff's equal protection cause of action.

F. The trial court properly sustained the demurrer to the seventh cause of action

Plaintiff's seventh cause of action alleged that a notice requirement in Ordinance No. 2860 is preempted by Civil Code sections 798.17 and 798.74.5, provisions of the Mobilehome Residency Law (§ 798 et seq.). We disagree.

1. Applicable legal principles

" 'If otherwise valid local legislation conflicts with state law, it is preempted by such law and is void.' " (*Sherwin–Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 897 (*Sherwin–Williams*).) " 'A conflict exists if the local legislation " 'duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication.' " ' " (*Ibid.*)

"Local legislation is 'duplicative' of general law when it is coextensive therewith." (*Sherwin–Williams*, *supra*, 4 Cal.4th

at p. 897.) It is " 'contradictory' to general law when it is inimical thereto." (*Id.* at p. 898.) "Finally, local legislation enters an area that is 'fully occupied' by general law when the Legislature has expressly manifested its intent to 'fully occupy' the area [citation], or when it has impliedly done so in light of one of the following indicia of intent: '(1) the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern; (2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or (3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the' locality." (*Ibid.*) " '[W]hen local government regulates in an area over which it traditionally has exercised control, such as the location of particular land uses, California courts will presume, absent a clear indication of preemptive intent from the Legislature, that such regulation is *not* preempted by state statute.' " (*O'Connell v. City of Stockton* (2007) 41 Cal.4th 1061, 1069.) "Before invalidating a local ordinance as preempted, a court must 'carefully insur[e] that the purported conflict is in fact a genuine one, unresolvable short of choosing between one enactment and the other.' " (*California Veterinary Medical Assn. v. City of West Hollywood* (2007) 152 Cal.App.4th 536, 549.)

2. Relevant legislation

Civil Code section 798.17 provides that mobilehome space rental agreements are exempt from local rent control laws if they satisfy certain criteria. (Civ. Code, § 798.17, subd. (a)(1).) Such

agreements must be for periods "in excess of 12 months' duration." (*Id.*, subd. (b)(1).) Exempt agreements must contain "[i]n the first sentence of the first paragraph" of the agreement "a provision . . . giving notice to the [tenant] that the rental agreement will be exempt from any ordinance, rule, regulation, or initiative measure adopted by any local governmental entity which establishes a maximum amount that a landlord may charge a tenant for rent." (*Id.*, subd. (a)(2).) The tenant must be notified in writing that he or she has at least 30 days to accept the agreement, and 72 hours to rescind the agreement after receiving an executed copy; failure to provide such notice renders the agreement voidable at the tenant's option. (*Id.*, subds. (b)(3)–(5), (f).) If the tenant rejects or rescinds the agreement, the tenant "shall be entitled to instead accept . . . a rental agreement for a term of 12 months or less" that presumably would be subject to any applicable local rent controls. (*Id.*, subd. (c).)

Civil Code section 798.74.5, subdivision (a), requires the management of a mobilehome park to provide a specific written notice to any prospective homeowner applying to reside in the park. The notice states that it "is not meant to be a complete list of information." (*Ibid.*) Among other things, the notice lists the amount of rent and any additional fees and charges for which the homeowner will be responsible, and explains that the homeowner will not be able to purchase the mobilehome without executing a rental agreement with the park management. (*Ibid.*) The notice also states that "[s]ome spaces are governed by an ordinance, rule, regulation, or initiative measure that limits or restricts rents in mobilehome parks. These laws are commonly known as 'rent control.' Prospective purchasers who do not occupy the

mobilehome as their principal residence may be subject to rent levels which are not governed by these laws. (Civil Code Section 798.21.) Long-term leases specify rent increases during the term of the lease. By signing a rental agreement or lease for a term of more than one year, you may be removing your rental space from a local rent control ordinance during the term, or any extension, of the lease if a local rent control ordinance is in effect for the area in which the space is located." (Civ. Code, § 798.74.5, subd. (a).)

Plaintiff alleged Civil Code sections 798.17 and 798.74.5 preempt section 8.70.150(B) of Ordinance No. 2860. Section 8.70.150(B) requires mobilehome park owners to provide prospective tenants with a written notification included in appendix A of the ordinance as well as a copy of the ordinance itself. The notification in appendix A states, among other things, that "[b]y signing this rental agreement, you are exempting this mobilehome space from the provisions of the City of El Monte Mobilehome Rent Stabilization Ordinance for the term of this rental agreement." It suggests the prospective tenant "may choose to see a lawyer" before signing the agreement. It further advises the prospective tenant of rights under Civil Code section 798.17, including the right to a lease of 12 months or less, 30 days to accept or reject the offer, and 72 hours to rescind the signed agreement. The ordinance provides that "[a]ny effort to circumvent" the notice requirements "shall be unlawful." (Ord. No. 2860, § 8.70.150(D).)

3. Analysis

Plaintiff alleged that Civil Code section 798.17 "occupies the field of long term lease[ ] offerings and mandated warning notices," and "Ordinance [No.] 2860 may not add to, supplement,

modify, or copy express notice requirements set forth in state law."

Plaintiff's preemption argument relies on *Mobilehome West Homeowners Assn. v. Escondido Mobilepark West* (1995) 35 Cal.App.4th 32 (*Mobilehome West*). The challenged ordinance in that case "set[ ] forth a procedure for dealing" with long-term mobilehome park leases exempt from rent control. (*Id.* at p. 38.) The ordinance required park management to submit long-term leases to a review board for approval before offering the leases to tenants. (*Ibid.*) The ordinance required park management to provide tenants with a copy of the local rent control law and notify tenants orally and in writing that a rental agreement in excess of 12 months may not be subject to rent control. (*Ibid.*) The ordinance also stated that a lease would not be exempt from the local rent control law unless it complied with Civil Code section 798.17. (*Ibid.*)

The Fourth District Court of Appeal concluded that the ordinance was preempted by Civil Code section 798.17, which "cover[ed] the field of setting conditions on the right of a park owner and existing homeowners to enter into rent control-exempt leases." (*Mobilehome West*, *supra*, 35 Cal.App.4th at p. 36.) The court held the requirement that a review board approve long-term leases was "inimical" to Civil Code section 798.17 because it "permit[ted] certain local control over leases that have otherwise qualified for exemption from rent control under state law." (*Id.* at p. 46.) The requirement that the park owner provide a copy of the rent control ordinance was preempted because "it impos[ed] an additional and superfluous requirement of disclosure of the ordinance as to those leases which the state has allowed to be exempt from such local rent control." (*Id.* at pp. 46–47.) The

requirement that the park owner notify the tenant orally that the lease would be exempt from rent control similarly was "an additional requirement of additional notice not required by state law" and the written notice was "duplicative" of Civil Code section 798.17. (*Id.* at p. 47.) The ordinance's statement that exempt leases had to comply with Civil Code section 798.17 similarly "amount[ed] to a duplication of state law, and [was] therefore improper." (*Id.*)

Mobilehome West is distinguishable from the instant case. The park owners in *Mobilehome West* abandoned their argument on appeal that Civil Code section 798.17 preempted the city's ordinance as to *prospective* tenants, and therefore the court expressly limited its holding to the ordinance as applied to *existing* tenants (that is, to the requirements of renewing existing leases). (*Mobilehome West*, *supra*, 35 Cal.App.4th at p. 43.) Ordinance No. 2860's notice requirements, however, apply only to prospective tenants. (Ord. No. 2860, § 8.70.150(B).)

The challenged ordinance in *Mobilehome West* also differs significantly from Ordinance No. 2860. The court interpreted the ordinance in *Mobilehome West* as creating an entire "procedure" (*Mobilehome West*, *supra*, 35 Cal.App.4th at p. 38) imposing additional requirements before a lease exempt from rent control could be executed, including subjecting leases to a review process before being offered to tenants. Ordinance No. 2860 has no review requirement, and nowhere suggests that a lease that complies with Civil Code section 798.17 but fails to meet Ordinance No. 2860's requirements is void or not exempt from rent control. We acknowledge that the *Mobilehome West* court held the requirement that park management provide tenants with a copy of the rent control ordinance was "additional

and superfluous" and therefore preempted (*Mobilehome West*, at p. 47). This holding, however, was in the context of the court invalidating the entire extensive procedure imposed by the ordinance, including the review requirement. We thus cannot know whether the Fourth District would have reached the same conclusion had only the notice requirement been at issue.

Indeed, Ordinance No. 2860's requirement that park owners notify prospective tenants of the City's rent control law is entirely consistent with Civil Code section 798.17, the clear purpose of which is to inform mobilehome park tenants of the possibility that they may be forfeiting rent protections by entering into long-term leases. It would defy common sense for Civil Code section 798.17 to require park owners to notify tenants that a long-term lease "will be exempt from any ordinance, rule, regulation, or initiative measure" imposing rent control, yet restrict the means by which local governments may notify tenants of the specific rent control law that applies. Far from being a "superfluous requirement of disclosure" (*Mobilehome West*, *supra*, 35 Cal.App.4th at p. 47), requiring park owners to provide copies of the local rent control ordinance ensures tenants receive complete information regarding their rights.

The required notice specified in Civil Code section 798.74.5 supports our conclusion because it states that the notice "is not meant to be a complete list of information." (Civ. Code, § 798.74.5, subd. (a).) We cannot conclude that a notice containing such a statement preempts a locality from providing additional information.

The trial court properly sustained the demurrer to plaintiff's seventh cause of action.

DISPOSITION

The judgment of dismissal is reversed as to plaintiff's second cause of action. The judgment is affirmed in all other respects. The parties are to bear their own costs on appeal.

NOT TO BE PUBLISHED.

BENDIX, J.

We concur:

CHANEY, Acting P. J.

WEINGART, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.